

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

| | | |
|---|---|--------------------|
| JOE M. CLINE |) | |
| Claimant |) | |
| VS. |) | |
| |) | Docket No. 196,024 |
| NATIONAL COOPERATIVE REFINERY ASSOC. |) | |
| Respondent |) | |
| AND |) | |
| |) | |
| ST. PAUL FIRE & MARINE INSURANCE CO. |) | |
| Insurance Carrier |) | |
| AND |) | |
| |) | |
| KANSAS WORKERS COMPENSATION FUND |) | |

ORDER

Respondent appeals from an Award entered by Administrative Law Judge Pamela J. Fuller on March 1, 1999. The Appeals Board heard oral argument August 25, 1999.

APPEARANCES

Scott J. Mann of Hutchinson, Kansas, appeared on behalf of respondent and its insurance carrier. Wendel W. Wurst of Garden City, Kansas, appeared on behalf of the Kansas Workers Compensation Fund. The issues between claimant and respondent have been settled and, as a result, claimant's counsel did not appear for the hearing before the Board.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The issue on appeal is whether the Kansas Workers Compensation Fund (Fund) should be charged with all or any part of the liability in this case pursuant to K.S.A. 44-567, the statutory provision which assigns the Fund liability for certain cases involving injury to handicapped employees. The ALJ determined the Fund has no liability in this case because the employer did not hire or retain claimant with knowledge of an impairment constituting a handicap. Respondent appeals from that finding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed.

The Board agrees respondent failed to prove it hired or retained claimant with knowledge of an impairment constituting a handicap. The applicable statutory provision was intended to encourage employers to hire and retain employees with an impairment which constitutes a handicap in obtaining or retaining employment. But the employer must know about the preexisting impairment before it avoids liability for injury caused or contributed to by that impairment. K.S.A. 44-567. In this case, claimant did miss substantial amounts of time for an earlier car accident but the employer's records do not reflect knowledge of an impairment constituting a handicap. And the evidence does not establish that the employer received any of the medical or hospital records which might have given the employer knowledge. The Board concludes the decision by the ALJ should, therefore, be affirmed. The Board agrees with and adopts as its own the findings and conclusions stated by the ALJ in the Award.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Pamela J. Fuller on March 1, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Scott J. Mann, Hutchinson, KS
Wendel W. Wurst, Garden City, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director